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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fourth to eighth periodic reports of South Africa

Addendum

Information received from South Africa on follow-up to the concluding observations*

[Date received: 8 November 2017]

* The present document is being issued without formal editing.

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1. Introduction

1. The Committee on the Elimination of Racial Discrimination considered the combined fourth to eighth periodic reports of South Africa (CERD/C/ZAF/4-8) at its 2460th and 2461st meetings held on 9 and 10 August 2016 respectively. At its 2476th meeting, held on 19 August 2016, it adopted the concluding observations (CERD/C/ZAF/CO/4-8) on South Africa's reports.

2. In accordance with article 9(1) of the Convention and rule 65 of its rules of procedure, the Committee has requested, in terms of paragraph 36 of the concluding observations, that South Africa provides, within one year of the adoption of the concluding observations, information on its implementation of the recommendations contained in paragraphs 9 and 13 of said concluding observations.

3. South Africa once again expresses its appreciation to the Committee for the fruitful discussions and South Africa is therefore pleased to submit its response to the Committee. South Africa wishes to indicate that the information furnished hereunder indicates its willingness and commitment to implement the recommendations made in the concluding observations within existing budgetary constraints of government.

2. Information furnished in terms of paragraph 9 of the concluding observations:

4. The recommendation contained in paragraph 9 states that "Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party implement the recommendations of the South African Human Rights Commission in order to strengthen the realization of the rights enshrined in the Convention. The Committee also recommends that the State party provide the Commission with adequate financial resources to effectively execute its mandate."

Implementation of the Recommendation of the SAHRC to strengthen the rights contained in the Convention:

5. With regards to the first aspect of the recommendation, namely the implementation of the recommendations of the South African Human Rights Commission ("SAHRC") to strengthen the rights contained in the Convention, it is important to highlight the work of the SAHRC and other bodies to strengthen the realization of the rights enshrined in the South Africa Constitution and the Convention.

6. The Constitution of the Republic of South Africa has created certain state institutions supporting constitutional democracy (known domestically as Chapter 9 bodies, as they are established in terms of Chapter 9 of the Constitution). These bodies include, amongst others, the SAHRC, the Commission for Gender Equality, the Office of the Public Protector and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. In a holistic sense these bodies all contribute to deal with the promotion and protection of the various human rights.

7. The SAHRC, in particular, is tasked with promoting respect for human rights and a culture of human rights. As part of its focus and activities it also deals with the prevention and combating of discrimination and the attainment of equality. In South Africa the prohibition of discrimination is closely linked to other human rights, such as civil-political and socio-economic rights.

8. The SAHRC enjoys Category A status in terms of the Paris Principles on the Status of Independent National Human Rights Institutions. The SAHRC is considered an independent body and accountable only to Parliament. In order to submit reports to Parliament, the SAHRC must, and do, annually require relevant organs of state to provide it with information on the measures taken to towards the realisation of rights concerning

amongst others, housing, health care, food, water, social security, education and the environment. The SAHRC also presents an Annual Report to Parliament regarding these focus areas.

9. One of the ways in which the implementation of human rights and compliance with the Constitution and international instruments, such as the Convention, is monitored is by means of the SAHRC's annual reports on socio-economic rights.[1] In these reports the SAHRC not only monitors the legislation and policies which have been adopted to realise socio-economic rights, but also the budget allocated towards realising them and the actual results of the measures.

10. The SAHRC's reports are also not limited to socio-economic rights only — for example, the SAHRC examined key developments around civil and political rights (CPR) in South Africa during 2016/2017 and released its Civil and Political Rights Report in March 2017. The report examines civil and political rights violations in relation to the following: use of excessive force during protests; overcrowding in correctional centres and violation of prisoners' rights; threats to media freedom; hate crimes against lesbian, gay, bisexual, transgender and intersex (LGBTI) people and foreign nationals; hate speech; privacy violations; censorship; political violence related to the local government elections; and the Fees Must Fall student protests. The report contains a number of conclusions and recommendations which assist in monitoring and compliance. In addition, the SAHRC also issues Hearing Reports,[2] Investigative Reports,[3] and Equality Reports.

11. Section 181(3) of the Constitution of the Republic of South Africa provides that "*organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions*." In 2002, Government established a dedicated unit under the Department of Justice and Constitutional Development to provide this assistance to those constitutional institutions. One of the measures put in place to achieve the objective set out in section 181(3) is quarterly meetings between the Justice Ministry and the SAHRC. Giving attention to the various recommendations made in the SAHRC reports forms part of the standing agenda items dealt with at said meetings. Opportunities are also provided for the SAHRC to make presentations on their recommendations to government clusters. An example of this is the 2008 SAHRC Report on violence against foreign nationals. This is but one of many ways in which the CERD's Concluding Observations are being given practical effect to.

12. The South African Human Rights Commission Act, 2013, provides that the Commission must also monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission. It is doing so by way of its submission of reports to, for example, the CERD and other UN Committees.

13. Insofar as its international obligations are concerned, it is noteworthy that the SAHRC concluded its term as Chair of the International Coordinating Committee for National Human Rights Institutions (ICC), now known as Global Alliance of National Human Rights Institutions (GANHRI), in March 2016. As it handed over the reins, the Commission left a legacy of a strong institutional culture, which will enable GANHRI to better coordinate the work and interests of national human rights institutions (NHRIs) on the African continent and elsewhere across the globe.

14. Many of the issues raised by the SAHRC in its submission to the CERD were subsequently discussed with the delegation when the delegation appeared before the Committee. With regards to the specific recommendations made by the SAHRC to the

[1] Section 184 (3) of the Constitution is specific in respect of the Commission's requirement to monitor and assess Economic and Social Rights. In particular, section 184 (3) requires that: "Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment."

[2] In 2016 it issued the Hearing Report on Transformation in Public Universities in South Africa 2016 and the Report on the Impact of Protest-Related Action on the Right to a Basic Education 2016.

[3] These are reports in respect of complaints lodged with the SAHRC.

Committee in August 2016, it can be noted that these recommendations affect a number of government departments and, in some instances, require proper and full policy consideration at a high level of government.

15. Relevant government departments have consequently been informed of the SAHRC's respective recommendations and discussions and are considering and/or addressing them on a continuous basis as part of their respective policies and programmes. In addition, government departments do, as part of the oversight role played by the various committees in Parliament, account to Parliament in their Annual Reports and these reports are interrogated and discussed by the various parliamentary committees and reported on in Parliament.

16. Many of the issues mentioned by the SAHRC in its submission to the CERD — such as the monitoring of places where persons are detained, "medical xenophobia," the rights of indigenous peoples — are of an on-going nature and are thus not limited to a one year period. Many of the SAHRC recommendations also mirror the areas addressed in the CERD's Concluding Observations such as, for example, hate crimes and hate speech legislation, harmful cultural practices, education, the rights of indigenous peoples, and the ratification of treaties. Thus South Africa will be able to fully report on these interventions in its combined 9th to 11th periodic reports, due by 9 January 2020, as directed by the Concluding Observations.

17. Where the SAHRC has, in its recommendation, referred to specific reports such as its Land Restitution Report, its Housing Report, its Water and Sanitation Report and its Right to Healthcare Report, these reports have also been brought to the attention of relevant line departments and are consequently receiving their attention. Further feedback in terms of progress in this regard will form part of the next periodic reports in 2020.

18. South Africa wishes to point out that it had reported fully on its compliance with, and progress made on, the relevant rights required in its Initial Report to the International Covenant on Economic, Social and Cultural Rights which was submitted on 24 April 2017. The issues reported on in that report are not re-iterated but are relevant in terms of the progress made by South Africa in the progressive realisation of our democratic aspirations.

The provision of adequate funding for the SAHRC:

19. With regards to the second aspect of the recommendation, namely the **provision of adequate funding to the SAHRC**, the table below indicates the funding/budget for the SAHRC over 7 financial years:

R'000	*2013/14*	*2014/15*	*2015/16*	*2016/17*	*2017/18*	*2018/19*	*2019/20*
	115 999	128 136	144 311	153 487	173 360	183 415	193 686

20. The table above shows both historical appropriated funds for the SAHRC as well as indicative future envisaged allocations over the medium term in terms of the SA Medium Term Expenditure Framework based on the policy framework of government to achieve our National Development Plan: Vision 2030. The allocations show significant, above-inflation, growth, aimed to fund the operational pressures experienced in the institution and to assist in its objectives.

21. The growth in budget is predominantly as a result of funds reprioritized from the overall budgets' of other government departments to this independent institution thereby demonstrating the executives' commitment to capacitation and functioning of our institutions in deepening the constitutional democracy.

22. An analysis of the SAHRC's 2016/17 budget shows that 91% or R140mil of the budget is allocated to personnel and related committed costs and 9% or R13mil of the budget is allocated to core operational units. Therefore an additional allocation of R11.5 million in 2017/18 and R12.2 million in 2018/19 will be specifically provided for advocacy work to the SAHRC.

23. It is common cause that cost-cutting measures have had to be implemented across all government departments and institutions. Budgetary and financial constraints are a reality and thus all bodies and institutions have had to ensure the optimal use of its resources with accompanying cost savings measures having to be adopted by all. The SAHRC, like other institutions supporting constitutional democracy, accounts to the National Assembly on its budget. Parliament, through the Portfolio Committee on Justice and Correctional Services, thoroughly examines the allocation and use of the budget of the SAHRC. The SAHRC also makes its budgetary requests directly to National Treasury.

24. The effective and optimal use of resources by Chapter 9 bodies has been an important consideration for some time. In 2006, Parliament appointed an Ad Hoc Committee to undertake a Review of Chapter Nine and Associated Institutions. It was a multi-party Committee to undertake a review of the institutions that support democracy, with a view to assessing whether the overall constitutional and legal mandates were suitable for South Africa; whether the resources accorded to them were deserving in relation to their actual outputs and contribution to democracy; and whether a rationalisation of the function would diminish focus in key areas of concern.

25. One of the recommendations of the Ad Hoc Committee was to create a single umbrella body, under which all the institutions supporting democracy would be managed, thereby allowing for added efficiency and the optimal use of resources. The Committee found that the multiplicity of institutions created to protect and promote the rights of specific constituencies in South Africa had in practice resulted in a duplication of work, an uneven spread of available resources and capacities, and with accompanying implications for effectiveness and efficiency.

26. One of the key recommendations of the Ad Hoc Committee was the establishment of a single human rights body, amalgamating the following institutions:

- The National Youth Development Agency,
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,
- The Commission for Gender Equality,
- The Pan South African Language Board, and
- The South African Human Rights Commission.

27. The Ad Hoc Committee was of the view that the main advantages to the establishment of such a single human rights body were, amongst others, the avoidance of duplication of effort, greater administrative efficiency and effective use of resources and greater accessibility and co-ordinated approach to public awareness of the Bill of Rights. Parliament has since called for submissions from civil society and others interested persons for the consideration of a feasibility study looking into the creation of such a single human rights body. The deadline date for submission was 31 May 2017. This is work in progress that will be reported on in the next periodic reports which are due in 2020.

3. Information furnished in terms of paragraph 13 of the concluding observations:

28. The recommendation contained in paragraph 13 states that "*The Committee welcomes the Prevention and Combating of Hate Crimes and Hate Speech Bill and encourages the State party to ensure that the bill is in accordance with the Convention and the Committee's general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech. The Committee recommends that the State party expedite the enactment of the bill, in consultation with the public. The Committee also recommends that the State party ensure that all incidents of hate crime and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status. The Committee calls on the State party to conduct educational campaigns to address the root causes of prejudices and to promote tolerance*

and respect for diversity, with a focus on the role and responsibilities of journalists and public officials in that regard."

Prevention and Combating of Hate Crimes and Hate Speech Bill:

29. With regards to the first aspect of the recommendation, namely the **expediting of the enactment of the Bill, in consultation with the public**, we can advise that government is prioritizing the Bill. The Bill was published for public comment in October 2016, and the closing date for submissions was 31 January 2017. There have been extensive consultations, radio interviews and media articles to inform the public of the Bill and to call for inputs from interested parties and persons. The bill has also attracted significant general media and social media interest in South Africa.

30. Interactions between government and religious bodies/institutions have also taken place in order to address specific concerns coming from religious bodies on the content of the bill.

31. Numerous submissions were received from a broad spectrum of interested parties and these are being evaluated with a view to incorporating same into the Bill where applicable.

32. After the Bill has been revised it will be submitted to Cabinet for approval for introduction into Parliament. Parliament will, as part of the legislative process, also publish the Bill for comment and will conduct public hearings for those with views on the Bill to make further submissions.

The investigation and prosecution of incidents of hate crime and hate speech:

33. With regards to the second aspect of the recommendation, namely ensuring that all incidents of hate crime and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status, it is important to note that there are increasing numbers of prosecutions for hate speech and/or crimen injuria. In general, the public appears to be more aware of their rights in this regard and are exercising them increasingly.

34. South Africa has unfortunately also seen an increase in hate speech incidents, particularly on social media. Many of these have led to criminal prosecutions,[4] such as the cases involving Penny Sparrow, who pleaded guilty to a charge of crimen injuria and was ordered to pay a R5 000 fine or spend 12 months in prison. She was also given a two-year prison sentence which was wholly suspended for five years on condition that she be not convicted of crimen injuria in the period of suspension. She also appeared in the Equality Court and was found guilty of hate speech and ordered to par R150 000 fine and the money from the fine would go to a charity that promotes cultural and heritage issues. The magistrate ordered the amount had to be payable within 60 days, and interdicted Ms Sparrow from further hate speech.

35. Other recent notable cases in the Equality Court or in the public domain include:

- A case of *crimen injuria* was opened against Velaphi Khumalo, and complaints were lodged at the SAHRC. The SAHRC is taking the matter to the Equality Court.
- A case relating to utterances by Vicky Momberg. The Equality Court sitting in the Randburg Magistrate's Court found that her utterances constituted hate speech and has ordered that she pay R100,000 in damages. The court also ordered her to make an unconditional written apology to Constable Clement Mkhondo, to publish the apology on social media platforms and on the South African Human Rights

[4]. Hate speech matters can also be referred to the Equality Court, however, it should be noted that the Equality Court provides for a civil remedy and thus not a criminal sanction.

Commission's website. She was also ordered to attend equality sensitivity training offered by the SAHRC and to undergo community service.

- A case relating to utterances by a former judge, Mable Jansen, who has subsequently resigned as a judicial officer.
- A case relating to utterances by Desiree du Preez who lashed out against the annual LGBTI event, which featured a mass same-sex wedding. At the Equality Court hearing, she agreed to offer an unconditional apology to the gay community in the local newspaper, as well as on Facebook. She also agreed to undergo sensitivity training facilitated by the Gender Equality Commission.

36. Hate crimes are not yet classified as hate crimes, but are prosecuted as murder, assault, crimen *inuiria* and so forth. The new Bill will create a category of hate crimes. A hate crime is committed if a person commits any recognised offence, that is a common law or statutory offence (referred to as the "base crime or offence") and the commission of that offence is motivated by unlawful bias, prejudice or intolerance. For example, a person throwing a brick at a mosque will currently be committing the crime of malicious injury to property, but once the Bill is passed, if it can be proved that the brick was thrown at the mosque was because the person dislikes Muslims, it would then be considered a hate crime. If crimes are found to be hate crimes it elevates the seriousness of the crime, the way it is dealt with by the criminal justice system and the penalties imposed.

37. Developing specific legislation on hate crimes will have a number of advantages. It will help create a shared definition of hate crime amongst all those involved in the criminal justice system and provide additional tools to investigators and prosecutors to hold hate crimes perpetrators accountable. It will also provide a means to monitor efforts and trends in addressing hate crimes and allow for effective coordination between government service providers to reduce the impact of secondary victimisation on hate crimes victims.

38. Government continues to intensify its efforts in combating violence and discrimination against lesbian, gay, bisexual and intersex (LGBTI) persons. Through the multi-sectoral LGBTI National Task Team (NTT), established by the Minister of Justice and Constitutional Development in 2013, government in collaboration with civil society and constitutional institutions developed a national intervention strategy on Gender and Sexual Orientation based Violence against LGBTI persons (NIS). The NIS consists of the following key objectives:

(a) Development of prevention programmes to address violence on the ground of sexual orientation and gender identity (targeting 5 million people per annum;

(b) Development of an improved response by the Criminal Justice System (CJS) to crimes affecting LGBTI Sector;

(c) Training of Public Service Institutions officials to deal with LGBTI issues including discrimination and hate crimes; and,

(d) Development of the monitoring and evaluation tool for mid and end-term review and assessment of impact made by the NIS activities.

39. To ensure implementation of the NIS, the NTT has established a national Rapid Response Team (RRT) and Provincial Task Teams (PTTs). This unique array of structures has ensured wide-level participation of role-players. The NTT and its sub-structures are chaired by government and co-chaired by a representative of civil society.

40. To date a number of measures have been put in place to investigate and prosecute acts of violence and discrimination against LGBTI persons, strengthen efforts to prevent, monitor and report such violence, as well as the consideration of homophobia and transphobia as aggravating factors in current and existing laws in the criminal justice system. The successes of the abovementioned initiatives have evidenced through the reduction of reported pending cases in the criminal justice system, the roll-out of a Training Guide developed by the NTT on LGBTI for role-players in the criminal justice system, the development of a draft management protocol on LGBTI cases by the South African Police Services, increased awareness of LGBTI rights through a number of public education and

communication activities, as well as proposed training of police and home affairs' officials at designated pilot sites, amongst others.

Educational Campaigns

41. With regards to the third aspect of the recommendation, namely **educational campaigns to address the root causes of prejudices and to promote tolerance and respect for diversity**, we can advise that Government runs various educational promotion of human rights' campaigns, including, amongst others, a successful Access to Justice and Promotion of Constitutional Rights Programme. Government and the European Union partnered in this programme which is anchored on three democratic pillars, namely access to justice, awareness of constitutional rights and participatory democracy.

42. Activities of the programme include support to advice offices, promoting the use of the Equality Courts and equality legislation — which aims to combat discrimination — and restorative justice programmes. Some of the activities undertaken in terms of this programme comprised capacity building of community advice offices (CAOs), as well as the implementation of a multifaceted strategy to educate communities about their rights in respect of the Equality Act, to provide support for grassroots organizations to assist communities with socio-economic rights issues and to address violence against women, children, the elderly and disabled.

43. Government has also spearheaded the development of a draft National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, in collaboration with various other role-players which include civil society. The draft NAP will inform a plan which provides the basis for the development of a comprehensive public policy against racial discrimination, xenophobia and related intolerance. The process relating to the development of a NAP for South Africa emanated from the Durban Declaration and Programme of Action (DDPA) adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Extensive public consultations across all provinces were conducted during 2016. Inputs and comments obtained are currently being incorporated into a revised NAP, where appropriate. As part of the NAP consultations, awareness was created around the need to rule out discrimination and prejudice.

44. The NAP is fully aligned to the vision and trajectory of South Africa's National Development Plan (NDP) in relation to Outcome 14: Nation Building and Social Cohesion, is that *"In 2030, South Africans will be more conscious of the things they have in common than their differences. Their lived experiences will progressively undermine and cut across the divisions of race, gender, disability, space and class. The nation will be more accepting of peoples' multiple identities"*.

45. Nation building and social cohesion is about the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. In terms of this definition, a community or society is cohesive to the extent that the inequalities, exclusions and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions distrust and conflict are reduced and/or eliminated in a planned and sustained manner. The overarching objectives in relation to nation building and social cohesion will be reducing inequality of opportunity, redress, enabling the sharing of common space, awakening the populace to speak when things go wrong and to be active in their own development as well as engendering the knowledge of the Constitution and fostering the values contained therein.

46. The Inter-Ministerial Committee (IMC) on Social Cohesion's work relating to social cohesion is critical in that the Medium Term Strategic Framework (MTSF) 2014-2019 and the NDP are aimed at ensuring a country where all people in South Africa will be more conscious of the things they have in common than those that differentiate them.

47. The MTSF and NDP envisage a country where lived experiences will progressively dissolve artificial divisions of race, gender, disability, space and class. In this South Africa

there will be broad-based knowledge of and support for a set of values by all South Africans, including the values contained in the Constitution, and an inclusive society and economy. This means the factors that sustain inequality will be met head-on by building capability and capacity, obstacles will be removed and the wrongs of the past will be systematically redressed. The NDP identifies the broadening of social cohesion as an important enabler towards achieving Vision 2030, while it is also included as one of the 14 priority outcomes in the MTSF. Government therefore runs various programs aimed at promoting social cohesion and nation-building in terms of Outcome 14.

48. As part of building social cohesion in school, Government has, through its Department of Basic Education, strengthened the implementation of an African Language policy, in support of social cohesion. The NDP requires all South Africans to learn at least one indigenous language as part of nation building and social cohesion. In 2014 we began with the incremental introduction of African languages (IIAL) in eight provinces and 228 schools as an immediate response.

49. South Africa, through the Department of Justice and Constitutional Development, the Department of Basic Education, the Department of Arts and Culture and the South African Human Rights Commission and the Commission for Gender Equality, have continued to roll out programmes that aim at raising awareness on rights and freedoms which individuals are entitled to under the UN Bill of Rights, the African Charter on Human and People's Rights and the Constitution of the Republic of South Africa.

50. Many of these programmes include public awareness campaigns on nation-building and social cohesion. March has been declared human rights month in South Africa, where celebrations and public awareness campaigns are held throughout the country, culminating into National Human Rights Day on 21 March.

51. With regards to respect towards foreign nationals in particular, Parliament established an Ad Hoc Joint Committee on Probing Violence against Foreign Nationals (the Committee) was established by the National Assembly (NA) on 6 May 2015 and by the National Council of Provinces (NCOP) on 7 May 2015. Emanating from its engagements, oversight, meetings and public submissions, the Committee recommended, inter alia, that there needs to be an emphasis, not only on the rights, but also the responsibilities of migrants. It was recommended that the South African Human Rights Commission could contribute to such education campaigns in the country. It was also recommended that Government, through the Minister of Arts and Culture, should further promote social cohesion by all government departments across all races and nationalities, including through the use of intercultural sport. These recommendations are being implemented on an on-going basis. This is on-going work in progress.

4. Concluding remarks

52. The Preamble of our Constitution states, that South Africa belongs to all who live in it, united in our diversity. South Africa remains committed to eradicating all forms of racism and racial discrimination. Though it is work in progress, the information submitted shows towards significant progress in this regard. South Africa is confident that we will be able to positively report on all the issues raised in concluding observations when we submit our further periodic reports in 2020.